



Terms and Conditions of Sale

All orders, in whatever terms, are accepted subject to the following conditions and no additions or alterations shall apply unless specifically agreed in writing by an authorised representative of Smart. Previous dealings between Smart and any customer shall not vary or replace these terms or be deemed in any circumstances to do so.

The Customer acknowledges that before entering into a contract for the purchase of any Goods or supply of Services from Smart he has expressly represented and warranted that he is not insolvent and has not committed any act of bankruptcy, or being a company with limited or unlimited liability, knows of no circumstances which would entitle any debenture holder or secured creditor to appoint a receiver, to petition for winding up of the company or apply for the appointment of an administrator or exercise any other rights over or against the company's assets.

The invalidity illegality or unenforceability of any provisions of this contract shall not affect the continuation in force of the remainder of these Terms and conditions of sale.

Interpretation

i. 'Acknowledgement' shall mean the order acknowledgment whether by a document issued or given orally by Smart to the Customer after either Smart has accepted an order from the Customer or the Customer has accepted a proposal from Smart in connection with the Goods and/or Services. Smart shall keep records of all orders acknowledged whether written or orally and such record shall be final conclusive evidence of the order in the event of any dispute.

ii. 'Business Hours' shall mean 9am to 5pm on a Working Day.

iii. 'The Customer' shall mean the party named as 'the Customer' in the quotation or purchase order.

iv. 'Services' shall mean the installation and other services which Smart is to supply as set out in the quotation / received purchase order.

v. 'Working Day' shall mean any day except a Saturday, Sunday of bank or public holiday in England.

vi. Words importing one gender include all other genders: words importing the singular include the plural and vice versa

The Conditions:

1. BASIS OF TRADE:

(a) Smart shall supply and the Customer shall purchase the Goods and/or Services in accordance with the quotation / purchase order subject to these Conditions.

(b) No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the parties.

(c) Smart shall not be liable for any advice or recommendation not given in writing by its employees or agents to the Customer or its employees or agents as to the performance of the Goods and/or Services and such advice or recommendation is acted upon entirely at the Customer's own risk.

(d) Smart shall not be liable for any typographical, clerical or other error or omission in any sales literature, proposal, price list, acceptance of offer, invoice or other document or information issued by it.

2. CANCELLATION:

(a) Smart reserves the right (without prejudice to any other remedy) to cancel any uncompleted order or to suspend delivery or services should it decide at its sole discretion that the Customer has not carried out its obligations, as agreed by both parties, to Smart.

(b) Should the Customer seek to cancel any order, it shall be the decision of Smart, at its sole discretion, whether or not such cancellation is valid.

(c) If an order is cancelled in any of the circumstances set out above the Customer shall indemnify Smart for all losses, costs, damages, charges and expenses arising out of the order and the cancellation thereof.

3. ACCEPTANCE:

(a) No order submitted by the Customer shall be deemed to be accepted by Smart unless and until confirmed in the Acknowledgement by its authorized representative.

(b) The acceptance by Smart of any order for Goods shall constitute an agreement to supply the Goods and not a sale of them and no title to the said Goods shall pass to the Customer by reason of delivery or acceptance of the same.

4. SPECIFICATION:

(a) The Customer shall be responsible to Smart for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer and/or giving Smart any necessary information relating to the Goods or Services or the premises at which the Goods are to be installed within a sufficient time to enable Smart to perform its obligations in accordance with these Conditions.

(b) The quantity, quality and description of and any specification for the Goods or Services shall be those set out in the Acknowledgement.

(c) Smart reserves the right to make any changes in the specification of the Goods or Services which are required to conform with any applicable statutory or EC or other legal requirements or where the Goods or Services are to be supplied to Smart's specification which do not materially affect their quality or performance.

5. PRICE:

(a) The price of the Goods or Services shall be Smart's quoted price or where no price has been quoted (or a quoted price is no longer valid) the price listed in Smart's published price list current at the date of the acceptance of the order.

(b) All prices quoted for cabling systems, excluding active hardware (switches, routers etc.) are valid for 30 days only or until earlier acceptance by the Customer after which time Smart, without giving notice to the Customer, may alter them. Due to prices changing regularly, prices for active hardware must be agreed at time of order.

(c) Smart reserves the right by giving notice to the Customer at any time before delivery to increase the price of the Goods and/or Services to reflect any increase in the cost to Smart which is due to any factor beyond the control of Smart (such as without limitation any foreign exchange fluctuation, regulation alteration of duties, or significant increase in the costs to Smart in acquiring the Goods), any change in delivery dates or Start Date quantities or specifications for the Goods or Services which is requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give Smart adequate information or instructions.

(d) Smart reserves the right, in addition to the price of the Goods or Services, to make a charge at its standard rates from time to time if:

- (i) the Customer requires Smart to carry out work which is additional to that stated in the Acknowledgement, or site conditions at the time, or site conditions which were not previously made known to Smart, make it necessary for Smart to carry out work which is additional to that stated in the Acknowledgement, or
- (ii) Smart is unable to start on the Start Date or progress with work due to delays caused by the Customer or by contractors of the Customer, or
- (iii) Condition 7(d) is not complied with, or
- (iv) Smart makes an abortive fault call as described in Condition 12(xi).
- (e) The price of the Goods is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay Smart.

6. DELIVERY:

- (a) Except as otherwise stated under the terms of any quotation or in any price list of Smart and unless otherwise agreed in writing between the Customer and Smart, all prices are given by Smart on an ex works basis, and where Smart agrees to deliver the Goods otherwise than at Smart's premises the Customer shall be liable to pay Smart's charges for transport packaging and insurance.
- (b) Unless otherwise agreed in writing, delivery of the Goods shall be made by Smart to the place nominated by the Customer. Smart will deliver the Goods by the most competitive route.
- (c) Smart will use all reasonable endeavours to deliver the Goods on the date stated in the Acknowledgement.
- (d) Smart will use its best endeavours to comply with its quoted delivery dates but Smart shall not be liable for any loss or damage (whether direct or consequential) whatsoever arising from late delivery of Goods or materials and the Customer shall not be entitled to treat the contract as repudiated by reason of any such late delivery.
- (e) If Smart fails to deliver the Goods for any reason other than any cause beyond Smart's reasonable control or the Customer's fault then Smart is accordingly liable to the Customer, Smart's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.
- (f) If the Customer wishes to make any claim for non-delivery then it must immediately notify Smart in writing if the Goods have not been received within 7 days of Smart's advice note.
- (g) The Customer shall inspect the Goods immediately upon delivery thereof and shall within 1 day from such delivery give notice in writing to Smart of any damage or loss or shortage of Goods, or of any matter or thing by reason whereof the Customer may allege that the Goods are not in accordance with the contract or are defective in material or workmanship. If the Customer shall fail to give such notice the Goods are thereafter implied to be in all respects in accordance with the contract and free from any defect which would be apparent upon reasonable examination of the Goods and the Customer shall be deemed to have accepted the Goods accordingly. In the event that the Customer establishes to Smart's reasonable satisfaction that the Goods are not in accordance with the contract or are so defective, the Customer's sole remedy in respect of such non-accordance or defects shall be limited, as Smart may elect, to the replacement of the faulty part or refund of the purchase price against the return of the Goods.

7. PERFORMANCE:

- (a) This Condition 7 applies only to contracts for the supply of Services or Goods and Services, but not Goods alone.
- (b) Smart will use all reasonable endeavours to start performance of the Services on the Start Date.
- (c) Smart will use its best endeavours to comply with the Start Date but Smart shall not be liable for any loss or damage (whether direct or consequential) whatsoever arising from the late supply of Services and the Customer shall not be entitled to treat the contract as repudiated by reason of any delay in the Start Date.
- (d) The Customer is to do and provide everything requisite to enable Smart's programme of work to be carried out in the sequence carried out by Smart without interruption, and unless otherwise agreed in writing the Customer will, prior to the Start Date, obtain all necessary and relevant licences permissions and consents relating to the performance of the Services at the site and will from the Start Date until completion of the Services procure that Smart is provided free of charge with the following facilities:
 - (i) Clear and continuous access to areas where Services are to be performed.
 - (ii) Adequate area to allow storage and adequate protection of the Goods and materials and Smart's equipment, tools and other property.
 - (iii) If the contract provides that Smart will use existing ducts, ducts with clear capacity for the Goods and with draw ropes, and free access to such ducts.
 - (iv) All cable access routes and working areas free from hazardous substances such as asbestos, toxic chemicals and explosives.
 - (v) Labour or equipment to enable the moving of items of a weight or dimension which would, in the opinion of Smart, require more than two persons to lift.
 - (vi) Artificial lighting and all power services.
 - (vii) All facilities and services required to ensure a safe working environment in compliance with all applicable Health and Safety and other legal provisions.
- (e) In the event of breach of the foregoing obligations or of any of the foregoing facilities not being provided, then without prejudice to Smart's other rights, the Customer will pay Smart's reasonable additional charges arising as a result.
- (f) If Smart fails to perform the Services for any reason other than a cause beyond Smart's reasonable control or to the Customer's fault then Smart is accordingly liable to the Customer. Smart's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar Services in substitution for those not performed over the price of the Services.

8. PAYMENT:

- (a) Unless the Customer has a 30 day from date of invoice credit account with Smart and subject to any special terms agreed in writing between the Customer and Smart, payment of Smart's services are 50% on placement and the remaining balance within 14 days of practical completion. Smart shall be entitled to recover the price notwithstanding that the property in the Goods has not passed to the Customer. All prices shown on any quote are net prices excluding VAT.**
- (b) If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Smart, Smart shall be entitled to:
 - i cancel the contract or suspend any further deliveries to the Customer;
 - ii appropriate any payment made by the Customer to such of the Goods or Services (or the goods supplied under any other contract between the Customer and Smart) as Smart may think fit (notwithstanding any purported appropriation by the Customer); and
 - iii charge the Customer interest after 30 days from the due date on any unpaid amount at the rate of 3 per cent per annum above Natwest bank plc Bank base rate applicable from time to time until payment in full is made.

9. RISK AND PROPERTY:

- (a) Risk of damage to and loss of the Goods shall pass to the Customer at the time of delivery or if the Customer wrongfully fails to take delivery of the Goods at the time when Smart has tendered delivery of the Goods.
- (b) Smart shall remain the sole and absolute owner of the Goods until such time as each invoice, including any interest accrued due to late payment and/or any other unforeseen costs arising out of the Customer's conduct shall have been paid in full and received by Smart. Until such time the Customer shall be the Bailee of the Goods for Smart and shall store them upon his premises separately from his own goods or those of any other person and in a manner which makes them readily identifiable as the Goods of Smart.

(d) Until such time as the title in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold) Smart shall then be entitled at any time to require the Customer to deliver up the Goods to Smart and if the Customer fails to do so forthwith, Smart shall be entitled to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

(e) The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Smart, but if the Customer does so all monies owing by the Customer to Smart shall (without prejudice or any other right to remedy of Smart) forthwith become due and payable.

10. PRODUCT INCORPORATION:

(a) The Customer shall be at liberty to sell or incorporate the Goods into another product or chattel subject to the condition that if the Goods are admixed or united in any way with those of the Customer, the product thereof shall become and/or shall be deemed to be for all purposes the property of Smart until all invoices, costs and interest for those Goods have been paid by the Customer and payment has been received by Smart. If the Goods are admixed or united in any way with the property of any person or persons other than the Customer or are processed with or incorporated therein, the product thereof shall become and shall be deemed for all purposes to be owned in common with that other person or persons. The Customer shall further indemnify Smart for any loss suffered as a result of the Goods being incorporated into another product where recovery of those Goods is not possible and/or a claim by Smart in respect of its retention of title of the same is unsuccessful.

(b) On sale to a sub-purchaser of the Goods or any products, goods or chattels to which the Goods have been attached or been incorporated, the proceeds thereof shall be held in trust for Smart, shall not be held together or mixed with other monies and shall not be paid into any overdrawn bank account but shall be paid into a fiduciary account for Smart with the Customer's bankers and not until payment to Smart of all invoices, costs and any interest accrued relating to those Goods shall the Customer be entitled to transfer such monies held in trust to any other account.

11. INSOLVENCY OF BUYER:

The Customer's right to the possession of the Goods or to the supply of the Services shall cease if he commits any available act of bankruptcy or (being a company) shall go into liquidation (save for the purpose of amalgamation or reconstruction of a solvent company) or shall have a receiver appointed of its undertaking or if the Customer shall enter into any arrangement or composition for the benefit of his creditors or shall suffer any distress or execution to be levied on his goods or (being a company) shall do anything which would entitle any person to present a petition for winding up or to apply for an administration order. The Customer agrees that Smart may for the purpose of recovery of its Goods enter the premises of the Customer without prior notice to the Customer and repossess such Goods.

12. WARRANTY / DEFECTS AFTER DELIVERY:

(a) For a maximum of a twelve month period from the date of delivery of the Goods, Smart will make good, by any means and method at its sole discretion, any defects which under proper use appear in such part or parts of the Goods as arise solely from faulty materials or workmanship PROVIDED ALWAYS that:

(i) any repairs to the Goods which may become necessary are carried out by Smart or its agents or otherwise as Smart may at its discretion agree in writing;

(ii) the Customer will allow Smart, its agents and/or contractors full access to the cabling network for the purpose of rectifying the defect;

(iii) any such Goods requiring inspection for repair or replacement are delivered promptly by the Customer, carriage paid, to Smart if necessary;

(iv) the Goods are properly maintained and operated in accordance with any instructions supplied to the Customer by Smart; prompt notification of the discovery of any defect in the Goods is given to Smart and, if aggravated damage may result from continued operation, the Goods are not used again until repairs have been effected; Smart shall not be liable in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer; Smart shall not be liable in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, fire tampering (including faults attributable to mains cabling), failure to follow Smart's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without Smart's approval; Smart shall not be liable for faults attributable to the 230 volt mains cabling; Smart shall not be liable under any warranty, conditions or guarantee expressly given or implied if the total price for the Goods has not been paid by the due date for payment; the warranty in this Condition 12 does not extend to parts, materials or equipment not manufactured by Smart in respect of which the Customer shall only be entitled to the benefit of such warranty or guarantee as is given by the manufacturer to Smart; any claim by the Customer which is based on the defect in the quality or conditions of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by Buyer) be notified to Smart within 7 days after discovery of the defect or failure. If delivery is not refused and the Customer does not notify Smart accordingly the Customer shall not be entitled to reject the Goods and Smart shall have no liability for such defect or failure and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the contract; or All parts replaced under warranty shall become the property of Smart and the new parts shall remain the property of Smart until such time as payment has been received in full from the Customer for the Goods to which they are part.

(b) In relation only to any contract for Services, the Customer's notice under condition 12(x) may be given by telephone to Smart during Business Hours stating the Customer's name the address where the Goods are installed and the nature of the fault. Within eight Business Hours of such fault call (or within such other period as shall have been agreed in writing with the Customer) Smart shall attend at the site notified by the Customer and shall as soon as reasonably practicable cure the fault by providing parts and labour to repair or replace the Goods or the part in question. The Customer will where required allow Smart its agents and contractors full access to the cabling network for this purpose. Smart shall have no further liability to the Customer in connection with a claim which is based on any defect in the quality or condition of the Goods or their failure to meet specification. Smart may charge its standard rates from time to time (including a minimum charge) for responding to a fault call if the fault is not attributable to the cabling network or if Smart is not liable in respect of the defect or under the warranty.

(c) In relation only to any contract for the Goods (without Services), Smart shall be entitled to repair or replace the Goods (or the part in question) free of charge or at Smart's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price) in respect of any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to Smart in accordance with Condition 12(x). Smart shall have no further liability to the Customer other than that stated in this Condition 12(xii).

13. FRUSTRATION:

If any contract or any part of it shall become impossible of performance or otherwise frustrated Smart shall be entitled to a fair and reasonable proportion of the price in respect of the work done up to the date thereof. For this purpose any monies previously paid by the Customer shall be retained as against the sum due to Smart under this provision. Smart may dispose of the Goods as Smart thinks fit, due allowance being made to the Customer for the net proceeds thereof.

14. FORCE MAJEURE:

(a) Smart shall have no liability in respect of failure to deliver or perform or delay in delivering or performing any obligations under a contract due to any cause outside the reasonable control of Smart including but not limited to civil commotion, strikes, lock-outs, war, fire, accidents, epidemics, governmental regulations or requirements, unavailability of materials or failure of original manufacturer or supplier, carrier or sub-contractor to deliver the Goods and if the delay or failure has continued for a period of 3 months then either party may give notice in writing to the other determining the contract and on such determination Smart shall refund to the Customer any payment which the Customer has already made on account of the price of the Goods after deduction of any payment due to Smart.

(b) Any monies owed by the Customer to Smart shall become immediately repayable in such circumstances and the provisions in Clause 8 of these terms shall become applicable.

15. PATENT RIGHTS:

The sale of any Goods and the publication of any information or technical data relating to such Goods does not imply freedom from patent or other protective rights in respect of any particular application of the Goods.

16. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS:

All rights relating to the specification and/or the designs of the Goods (including any copyright, design right or other intellectual property rights in the same) shall as between Smart and the Customer be the sole and absolute property of the Smart.

17. DRAWINGS AND DESCRIPTIVE DOCUMENTS:

All software specifications, drawings, plan designs and technical documents and information supplied by Smart for the Customer's use or information shall remain at all times Smart's exclusive property and must not be copied, reproduced, transmitted or communicated to a third party without Smart's prior consent in writing.

18. LEGAL INTERPRETATION:

Any contract between Smart and the Customer shall be governed by English law. Any dispute arising out of or in connection with these terms shall be determined under the exclusive jurisdiction of the English Courts.

19. HEALTH AND SAFETY AT WORK ACT 1974:

For the purposes of section 6 of the Health and Safety at Work Act 1974 the Customer hereby undertakes that the Goods supplied by Smart will be used as specified and for laid down uses in accordance with the appropriate Health and Safety information supplied by Smart and, in particular, ensure that this information will be brought to the attention of all users of the Goods. All such information provided by Smart is based on results gained from experience and tests by the manufacturers and is believed to be accurate and adequate for the uses laid down but no liability can be accepted for uses outside those laid down.

20. LIMITATION OF LIABILITY:

Smart's liability (if any) whether in contract, tort or otherwise in respect of any defect in the Goods or fault caused by the Services, or for any breach of the contract or of any duty owed by the Customer in connection therewith shall be further limited in the aggregate to the agreed price of the Goods and/or Services in question.

21. GENERAL:

(a) These terms set out Smart's entire liability in respect of the Goods and Services, and Smart's liability under these terms shall be in lieu and to the exclusion of all other warranties, conditions, terms and liabilities express, implied or statutory or otherwise in respect of the quality or the fitness for any particular purpose of the Goods or otherwise (notwithstanding any advice or representation to the Customer, all liability in respect of which howsoever arising is expressly excluded) except any implied by law or statute and which by law or statute cannot be excluded.

(b) Save as provided in these terms and except as aforesaid Smart shall not be under liability, whether in contract, tort or otherwise in respect of defects in the Goods or fault caused by the Services or failure to correspond with the specification or sample or for any injury, damage or loss resulting from such defects or from any work done in connection therewith.

(c) Smart may sub-contract performance of any of the Services.

(d) Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.

(e) No waiver by Smart of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

(f) If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity or the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

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